

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LYDIAN PRIVATE BANK d/b/a VIRTUALBANK,	:	
	:	
Plaintiff,	:	<u>ANSWER</u>
	:	
-against-	:	07-CV-8173 (LTS)
	:	
STEVEN M. LEFF, RICHARD A. LEFF, RACHEL M.	:	
LEFF, and NATIONAL SETTLEMENT AGENCY, INC.,	:	
	:	
Defendants.	:	
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Defendant, RICHARD A. LEFF (hereinafter referred to as “Defendant”), by and through his attorneys, KAUFMAN BORGEEST & RYAN LLP, responds to the allegations made against him in the Plaintiff’s Complaint as follows:

**ALLEGATIONS COMMON
TO ALL PURPORTED CAUSES OF ACTION**

1. The Defendant denies the allegations contained in paragraph “1” of the Plaintiff’s Complaint.

PARTIES

2. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “2” of the Plaintiff’s Complaint.

3. The Defendant admits that Steven M. Leff was the president of NSA and was an attorney admitted to practice law in the State of New York, but denies knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph “3” of the Plaintiff’s Complaint.

4. The Defendant admits that he is an attorney licensed in the State of New York and that he resides 10 Park Road, Short Hills, NJ 07078, but denies the remaining allegations contained in paragraph “4” of the Plaintiff’s Complaint.

5. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “5” of the Plaintiff’s Complaint.

6. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “6” of the Plaintiff’s Complaint.

JURISDICTION

7. The Defendant denies the allegations contained in paragraph “9” of the Plaintiff’s Complaint and respectfully refers all questions of law to the Court for judicial determination.

8. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “8” of the Plaintiff’s Complaint.

9. The Defendant admits that he is a citizen of the state of New Jersey, but denies knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph “9” of the Plaintiff’s Complaint.

10. The Defendant denies the allegations contained in paragraph “10” of the Plaintiff’s Complaint and respectfully refers all questions of law to the Court for judicial determination.

VENUE

11. The Defendant denies the allegations contained in paragraph “11” of the Plaintiff’s Complaint and respectfully refers all questions of law to the Court for judicial determination.

FACTUAL ALLEGATIONS

12. The Defendant denies the allegations contained in paragraph “12” of the Plaintiff’s Complaint.

13. The Defendant denies the allegations contained in paragraph “13” of the Plaintiff’s Complaint.

14. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “14” of the Plaintiff’s Complaint.

15. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “15” of the Plaintiff’s Complaint.

16. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “16” of the Plaintiff’s Complaint.

17. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “17” of the Plaintiff’s Complaint.

18. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “18” of the Plaintiff’s Complaint.

19. The Defendant denies he made any representations to Plaintiff and denies knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph “19” of the Plaintiff’s Complaint.

20. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “20” of the Plaintiff’s Complaint.

21. The Defendant denies making any representations to Plaintiff and denies knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph “21” of the Plaintiff’s Complaint.

22. The Defendant denies making or engaging in any representations, agreements or undertakings to, with, for or on behalf of Plaintiff and denies knowledge or information

sufficient to form a belief as to the remaining allegations contained in paragraph “22” of the Plaintiff’s Complaint.

23. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “23” of the Plaintiff’s Complaint.

24. The Defendant denies making any representations to Plaintiff and denies knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph “24” of the Plaintiff’s Complaint.

25. The Defendant denies the allegations contained in paragraph “25” of the Plaintiff’s Complaint.

26. The Defendant denies the allegations contained in paragraph “26” of the Plaintiff’s Complaint.

27. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “27” of the Plaintiff’s Complaint.

28. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “28” of the Plaintiff’s Complaint.

29. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “29” of the Plaintiff’s Complaint.

30. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “30” of the Plaintiff’s Complaint.

31. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “31” of the Plaintiff’s Complaint.

32. The Defendant denies having access to NSA's books and records and denies knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph "30" of the Plaintiff's Complaint.

33. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "33" of the Plaintiff's Complaint.

FIRST PURPORTED CAUSE OF ACTION

34. The Defendant repeats, reiterates and realleges each and every response to the allegations in the Plaintiff's Complaint, as if each were set forth verbatim herein.

35. The Defendant denies the allegations contained in paragraph "35" of the Plaintiff's Complaint.

36. The Defendant denies the allegations contained in paragraph "36" of the Plaintiff's Complaint.

37. The Defendant denies the allegations contained in paragraph "37" of the Plaintiff's Complaint.

38. The Defendant denies the allegations contained in paragraph "38" of the Plaintiff's Complaint.

39. The Defendant denies the allegations contained in paragraph "39" of the Plaintiff's Complaint.

40. The Defendant denies the allegations contained in paragraph "40" of the Plaintiff's Complaint.

41. The Defendant denies the allegations contained in paragraph "41" of the Plaintiff's Complaint.

42. The Defendant denies the allegations contained in paragraph "42" of the Plaintiff's Complaint.

43. The Defendant denies the allegations contained in paragraph "43" of the Plaintiff's Complaint.

SECOND PURPORTED CAUSE OF ACTION

44. The Defendant repeats, reiterates and realleges each and every response to the allegations in the Plaintiff's Complaint, as if each were set forth verbatim herein.

45. The Defendant denies the allegations contained in paragraph "45" of the Plaintiff's Complaint.

46. The Defendant denies embezzling any funds and denies knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph "46" of the Plaintiff's Complaint.

47. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "29" of the Plaintiff's Complaint.

48. The Defendant denies the allegations contained in paragraph "48" of the Plaintiff's Complaint.

49. The Defendant denies the allegations contained in paragraph "49" of the Plaintiff's Complaint

50. The Defendant denies the allegations contained in paragraph "50" of the Plaintiff's Complaint

THIRD PURPORTED CAUSE OF ACTION

51. The Defendant repeats, reiterates and realleges each and every response to the allegations in the Plaintiff's Complaint, as if each were set forth verbatim herein.

52. The Defendant denies the allegations contained in paragraph "52" of the Plaintiff's Complaint.

53. The Defendant denies the allegations contained in paragraph "53" of the Plaintiff's Complaint.

54. The Defendant denies the allegations contained in paragraph "54" of the Plaintiff's Complaint.

55. The Defendant denies the allegations contained in paragraph "55" of the Plaintiff's Complaint.

FOURTH PURPORTED CAUSE OF ACTION

56. The Defendant repeats, reiterates and realleges each and every response to the allegations in the Plaintiff's Complaint, as if each were set forth verbatim herein.

57. The Defendant denies the allegations contained in paragraph "57" of the Plaintiff's Complaint.

58. The Defendant denies the allegations contained in paragraph "58" of the Plaintiff's Complaint.

59. The Defendant denies the allegations contained in paragraph "59" of the Plaintiff's Complaint.

60. The Defendant denies the allegations contained in paragraph "60" of the Plaintiff's Complaint.

61. The Defendant denies the allegations contained in paragraph "61" of the Plaintiff's Complaint.

FIFTH PURPORTED CAUSE OF ACTION

62. The Defendant repeats, reiterates and realleges each and every response to the allegations in the Plaintiff's Complaint, as if each were set forth verbatim herein.

63. The Defendant denies the allegations contained in paragraph "63" of the Plaintiff's Complaint.

64. The Defendant denies the allegations contained in paragraph "64" of the Plaintiff's Complaint.

65. The Defendant denies the allegations contained in paragraph "65" of the Plaintiff's Complaint.

66. The Defendant denies the allegations contained in paragraph "66" of the Plaintiff's Complaint.

67. The Defendant denies the allegations contained in paragraph "67" of the Plaintiff's Complaint.

SIXTH PURPORTED CAUSE OF ACTION

68. The Defendant repeats, reiterates and realleges each and every response to the allegations in the Plaintiff's Complaint, as if each were set forth verbatim herein.

69. The Defendant denies the allegations contained in paragraph "69" of the Plaintiff's Complaint.

70. The Defendant denies the allegations contained in paragraph "70" of the Plaintiff's Complaint.

71. The Defendant denies the allegations contained in paragraph "71" of the Plaintiff's Complaint.

72. The Defendant denies the allegations contained in paragraph “72” of the Plaintiff’s Complaint.

73. The Defendant denies the allegations contained in paragraph “73” of the Plaintiff’s Complaint.

SEVENTH PURPORTED CAUSE OF ACTION

74. The Defendant repeats, reiterates and realleges each and every response to the allegations in the Plaintiff’s Complaint, as if each were set forth verbatim herein.

75. The Defendant denies the allegations contained in paragraph “75” of the Plaintiff’s Complaint.

76. The Defendant denies the allegations contained in paragraph “76” of the Plaintiff’s Complaint.

77. The Defendant denies the allegations contained in paragraph “77” of the Plaintiff’s Complaint.

78. The Defendant denies the allegations contained in paragraph “78” of the Plaintiff’s Complaint.

EIGHTH PURPORTED CAUSE OF ACTION

79. The Defendant repeats, reiterates and realleges each and every response to the allegations in the Plaintiff’s Complaint, as if each were set forth verbatim herein.

80. The Defendant denies the allegations contained in paragraph “80” of the Plaintiff’s Complaint.

81. The Defendant denies the allegations contained in paragraph “81” of the Plaintiff’s Complaint.

NINTH PURPORTED CAUSE OF ACTION

82. The Defendant repeats, reiterates and realleges each and every response to the allegations in the Plaintiff's Complaint, as if each were set forth verbatim herein.

83. The Defendant denies diverting any funds and denies knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph "83" of the Plaintiff's Complaint.

84. The Defendant denies having access to books and records and therefore denies the allegations contained in paragraph "84" of the Plaintiff's Complaint.

85. The Defendant denies ever being in receipt, possession, custody or control of any funds and therefore denies the allegations contained in paragraph "85" of the Plaintiff's Complaint.

TENTH PURPORTED CAUSE OF ACTION

86. The Defendant repeats, reiterates and realleges each and every response to the allegations in the Plaintiff's Complaint, as if each were set forth verbatim herein.

87. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "87" of the Plaintiff's Complaint.

88. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "88" of the Plaintiff's Complaint.

89. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "89" of the Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

The Plaintiff's Complaint fails to state a cause of action for which relief may be granted against the Defendant and should be dismissed.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

The Defendant exercised due care and diligence in all matters alleged in the Plaintiff's Complaint.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

Any damages to the Plaintiffs are the result of the acts or omissions of third persons or entities over which the Defendant exercised no direction or control.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

The Plaintiff's purported breach of contract claim must be dismissed pursuant to the Statute of Frauds.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

The Defendant was not the proximate cause of the Plaintiff's alleged damages.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

The Plaintiff's Complaint fails to comport with Rule 9(b) and should be dismissed.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

The Plaintiff's Complaint fails to establish actionable damages resulting from the Defendant's alleged acts/omissions.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

The Plaintiff's Complaint fails to establish that the Defendant's conduct fell below the applicable standard of care.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

The Plaintiff's Complaint fails to join persons needed for just adjudication.

WHEREFORE, Defendant Richard Leff hereby demands judgment dismissing the Plaintiff's Complaint in its entirety, together with the costs and disbursements of this action, including attorneys' fees and for such other, further and different relief as this court may deem just and proper.

Dated: New York, New York
October 31, 2007

Respectfully Submitted,

KAUFMAN BORGEEST & RYAN LLP

By: 

Jonathan B. Bruno

Michael Neri

Attorneys for Defendant,

Richard Leff

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New York, New York 10016

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CERTIFICATE OF SERVICE

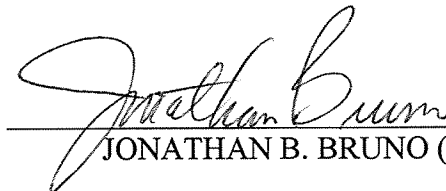
This is to certify that true and correct copies of the foregoing: **ANSWER** was served via

First Class mail on the 31st day of October 2007 upon:

Jeremy M. Sher, Esq.
Miller & Wrubel P.C.
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JONATHAN B. BRUNO (JB 6163)